



## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 6091-N-01]

### Implementation of the Tribal HUD-VA Supportive Housing Program

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing.

**ACTION:** Notice.

**SUMMARY:** On October 21, 2015, HUD published in the Federal Register a Notice that established the policies and procedures for the administration of a supportive housing and rental demonstration called “Implementation of the Tribal HUD-VA Supportive Housing Program” (Tribal HUD-VASH). The program provides rental assistance and supportive services to Native American veterans who are Homeless or At Risk of Homelessness living on or near a reservation or other Indian areas. HUD also issued technical corrections in the Federal Register on December 6, 2016 to clarify the program’s intent and address various issues that arose during the implementation of the program. Today’s Federal Register Notice consolidates all Tribal HUD-VASH program requirements in one Notice and supersedes the prior Notices. This Notice also establishes HUD’s procedures for issuing renewal funding, subject to the availability of future appropriations.

**DATES:** Applicability Date: [Insert date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Heidi J. Frechette, Deputy Assistant Secretary, Office of Native American Programs (ONAP), Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 4126, Washington, DC 20410, telephone number 202-402-7914. (This is not a toll-free number.) Hearing - or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

- I. Background
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**I. Background**

Since Fiscal Year (FY) 2008, the Housing Choice Voucher (HCV) program has provided rental assistance under a supportive housing program for Homeless veterans authorized by section 8(o)(19) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(19)). The initiative, known as the HUD-VA Supportive Housing (HUD-VASH) program, was initially authorized by the Consolidated Appropriations Act, 2008 (Pub. L. 110-161, approved December 26, 2007). The HUD-VASH program combines HCV rental assistance for Homeless veterans with Case Management and clinical services provided by or through the VA through Veterans Administration Medical Centers (VAMC). Historically, this program has not reached Native American veterans in tribal communities due to legal impediments preventing tribes and tribally designated housing entities (TDHEs) from participating in the HUD-VASH program.

In the Consolidated and Further Continuing Appropriations Act, 2015 (Public Law 113-235, approved December 16, 2014) (“2015 Appropriations Act”), Congress authorized funding for a demonstration program to expand the HUD-VASH program into Indian Country. The 2015

Appropriations Act directed HUD to coordinate with Indian tribes, TDHEs, and other appropriate tribal organizations to design this program, and ensure the effective delivery of housing assistance and supportive services to Native American veterans who are Homeless or At Risk of Homelessness. It also authorized HUD to make appropriate adjustments to the HUD-VASH model, and to waive or specify alternative requirements (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment) for any provision of any statute or regulation that it administers if it finds that they are necessary for the effective delivery and administration of rental assistance under the program.

On January 26, 2015, HUD sent a “Dear Tribal Leader” letter to tribal leaders, tribal organizations, and TDHE directors soliciting comments on a Tribal HUD-VASH demonstration program (Tribal HUD-VASH). HUD also held a national listening session at the National American Indian Housing Council’s Legislative Conference held on February 2, 2015, followed by regional listening sessions held at each of the six Office of Native American Programs (ONAP) field offices. HUD also received comments from tribes through letters and emails. Generally, the comments were supportive of the program. The comments offered suggestions on how the program should be structured to address aspects such as rent and geographic distribution. HUD considered these comments when developing the Tribal HUD-VASH program.

On October 21, 2015, HUD published a Notice entitled “Implementation of the Tribal HUD-VA Supportive Housing Program” in the Federal Register establishing the policies and procedures for the Tribal HUD-VASH program (80 FR 63822). HUD announced the availability of \$4 million in grant funding to Indian tribes and TDHEs to fund tenant-based or project-based rental assistance and associated administrative expenses. Under Tribal

HUD-VASH, Indian tribes and TDHEs participants must partner with the Department of Veterans Affairs (VA) to provide healthcare assistance to eligible Native American veterans. On March 2, 2016, HUD published a Notice entitled, “Tribal HUD–VA Supportive Housing Program Awards, Fiscal Year 2015” notifying the public regarding the tribes/TDHEs selected for the program in the Federal Register. In total, 26 tribes/TDHEs were awarded \$5.9 million in funding, as funding became available in addition to the original \$4 million cited in the implementation Notice 81 FR 10880. Finally, HUD issued technical corrections to the October 21, 2015, Federal Register Notice on December 6, 2016 to address issues that arose during the implementation of the program 81 FR 87948.

In the Consolidated Appropriations Act, 2017 (P.L. 115-31, approved May 5, 2017) an additional \$7 million for renewal grant funding and limited expansion was provided for the Tribal HUD-VASH program. Today’s announcement supersedes the Notices issued on October 21, 2015 and December 6, 2016 by consolidating all the Tribal HUD-VASH program requirements. This Notice also establishes HUD’s procedures for issuing renewal funding, subject to the availability of future appropriations. Any future changes to Tribal HUD-VASH program definitions, requirements, and implementation will be outlined in future Federal Register Notices issued by HUD.

## **II. Definitions**

**Case Management** – For purposes of Tribal HUD-VASH, Case Management is a specialized component of healthcare management, requiring highly skilled, trained professionals. Case Management emphasizes a collaborative process that assesses, advocates, plans, implements, coordinates, monitors, and evaluates health care options and services so that they meet the needs of the individual patient.

**Community Based Outpatient Clinic (CBOC)** – A Community Based Outpatient Clinic (CBOC) is a VA-operated clinic or a VA-funded or reimbursed health care facility or site that is geographically distinct or separate from the parent medical facility.

**Fair Market Rent (FMR)** – Fair Market Rent means the rent, as established by HUD, for units of varying sizes (by number of bedrooms), that must be paid in the market area to rent privately-owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities.

**Homeless and At Risk of Homelessness** – For purposes of Tribal HUD-VASH, HUD is adopting the definitions of “Homeless” in Section 103(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302(a)) and “At Risk of Homelessness” in Section 401(1) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(1)). However, the income provision at 42 U.S.C. 11360(1)(A) does not apply to the Tribal HUD-VASH program. Instead, HUD is adopting the low-income eligibility requirements in Section 4(14) of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). Accordingly, a veteran will be eligible for this program if he or she otherwise meets the definition of “Homeless” or “At Risk of Homelessness,” and is a low-income Indian, as defined in NAHASDA (i.e., has an income that is no more than 80 percent of area median income for the Indian area as determined by HUD).<sup>1</sup>

**Privately-owned housing** – Privately-owned housing is any unit not directly owned by the Tribal HUD-VASH grantee. Accordingly, in situations where the TDHE is the Tribal HUD-VASH grantee, but the unit is owned by another tribal organization (such as the tribe), the unit would be considered privately-owned for purposes of this program (see 81 FR 87948).

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<sup>1</sup> Wherever the phrase “Homeless veteran” appears in this Notice, it will also include veterans who are At Risk of Homelessness unless explicitly stated otherwise.

**Project-Based Rental Assistance (PBRA)** – Rental housing assistance tied to a specific housing unit or units. The housing assistance stays with the unit or units and any household living in the unit must meet program requirements. If the household moves out of the subsidized unit, they no longer receive rental housing assistance.

**Tenant-Based Rental Assistance (TBRA)** – Rental housing assistance tied to a specific household. The eligible applicant selects and rents a unit (whether private or TDHE-owned) that meets program requirements, and the tribe or TDHE makes rent subsidy payments on behalf of the household. The assistance stays with the household; if the household moves to a different unit that meets program qualifications, the tribe or TDHE makes rental payments to the owner of the new unit on the household's behalf.

### **III. General Program Requirements**

HUD consolidates all program requirements of Tribal HUD-VASH with the publication of this Notice. Any future changes to program requirements will be outlined in future Federal Register Notices issued by HUD. In accordance with the 2015 Appropriations Act, this Notice includes appropriate adjustments to program requirements through the issuance of statutory and regulatory waivers that HUD has deemed necessary for the effective delivery and administration of rental assistance under the program. Generally, rental assistance under this program is subject to all requirements of NAHASDA that are applicable to rental assistance funded under the Indian Housing Block Grant (IHBG) program. This includes the NAHASDA statute (25 U.S.C. 4101 et seq.), all IHBG program regulations in 24 CFR part 1000, and all other Federal laws and regulations applicable to the IHBG program. To the extent that program requirements in this Notice differ from any provision in NAHASDA and 24 CFR part 1000, and any other statute or

regulation that HUD administers, with the exception of any Federal civil rights and fair housing laws and requirements, the terms of this Notice will govern.

Housing assistance under this program is made available by grants to tribes and TDHEs that are eligible to receive IHBG funding under NAHASDA. Tribes request Tenant-Based and/or Project-Based Rental Assistance by the number of bedrooms in a rental unit. Grants are awarded based on the number rental units (Tenant-Based and Project-Based Rental Assistance) approved by HUD. Grants include an additional amount for administrative costs, which will be described in more detail later in this Notice. Grant funding is awarded based on 12 months of funding. Participating tribes/TDHEs draw down funds from the HUD Line of Credit Control System (LOCCS) on a monthly basis to cover rental assistance payments.

Eligible Homeless veterans receive case management services through the Department of Veterans Affairs. A tribe/TDHE works with the local VAMC to determine how Case Management will be delivered to Native American veterans. VA may provide these services directly through the local VAMC, or through a CBOC. Alternatively, the VA may engage in a contractual relationship with a tribal healthcare provider or the Indian Health Service (IHS) for service delivery. A tribe/TDHE may partner with VA to provide office space within the tribal area for the VA caseworker to operate. Additionally, VA, in coordination with the tribe/TDHE may partner with IHS to provide space for VA case management activities at an IHS facility. Locations for the provision of case management must comply with accessibility requirements as referenced in 24 CFR 1000.12(b).

Native American veterans participating in this program are housed based on a Housing First approach, where Homeless veterans are provided housing assistance and then offered the supportive services that may be needed to foster long-term stability and prevent a return to

Homelessness. This approach assumes that supportive services are more effective when the individual or household is housed, and the daily stress of being Homeless is relieved. Key components of the Housing First model include a simple application process for participating veterans, a harm reduction approach from VA, and no conditions of tenancy beyond those included in the lease and the requirements in this Notice. Housing First specifically does not require sobriety or testing for substance abuse to obtain or sustain tenancy, and thus must not be required in the lease. More information on Housing First is available at:

[http://usich.gov/usich\\_resources/fact\\_sheets/the\\_housing\\_first\\_checklist\\_a\\_practical\\_tool\\_for\\_assessing\\_housing\\_first\\_in](http://usich.gov/usich_resources/fact_sheets/the_housing_first_checklist_a_practical_tool_for_assessing_housing_first_in)

#### **IV. Allocation of Assistance**

The 2015 Appropriations Act authorized HUD to set aside an amount from the HUD-VASH program for a tribal demonstration program. HUD originally awarded \$5.9 million in funding to 26 tribes/TDHEs, to support approximately 600 rental housing units and associated administrative fees for Tribal HUD-VASH.

Pursuant to the 2015 Appropriations Act, awards under this program were based on need, administrative capacity, and other factors that HUD specifies in this Notice after coordination with the VA. The method of allocating assistance under this program was developed through a collaborative effort among VA and HUD's Offices of Public and Indian Housing, Policy Development and Research, and Community Planning and Development. HUD also considered all comments and suggestions made by Indian tribes during the tribal consultation process. Responding to tribal comments, HUD explored the possibility of allocating funding through a tribal competition. However, HUD determined the best method for allocation under the demonstration program was to follow as closely as possible the existing parameters for the



standard HUD-VASH program. HUD is open to reconsidering a competitive process at a later date, if additional funding is received for a Tribal HUD-VASH program.

To identify potential Tribal HUD-VASH sites, HUD used a combination of VA data and data from the American Community Survey (ACS). First, HUD and VA identified VAMCs serving high populations of Homeless Native American veterans. To ensure geographic distribution, HUD selected the top two VAMCs with the highest Homeless Native American population in each of the six ONAP regions. HUD then identified the tribes within these VAMC “catchment” or operating areas. Using VA data showing the number of Native American veterans by tribal areas, HUD then prioritized tribes based on the presence of the greatest number of veterans and cross referenced this list with ACS data. In some instances, tribes with large populations of Native American veterans were outside of the VAMC catchment area. When this occurred, HUD added the tribe (and local VAMC) for consideration in that ONAP region. VA allocated funding for the equivalent of up to 30 professional, full-time Tribal HUD-VASH case managers, which may be used to directly hire VA staff or enter into a contractual relationship with a tribe or IHS facility. Each case manager has the capacity to serve between 15-25 Native American veterans. Case managers are assigned to VAMCs based on the overall level of need and capacity in each ONAP region.

Tribes/TDHEs selected in each ONAP region were invited to apply for Tribal HUD-VASH shortly after publication of the October 21, 2015 Notice. Tribes/TDHEs were required to submit a Tribal HUD-VASH application and if any declined to participate or did not need its full allocation, HUD invited the next highest tribe within an ONAP region ranked by need and capacity. A tribe/TDHE that participated in the Tribal HUD-VASH program must partner with its VAMC.

In general, tribes were awarded grants equal to an amount that funds rental assistance payments for between 15-25 rental housing units, which is equal to the capacity of one Tribal HUD-VASH case manager. If there were other tribes in the area with eligible veterans who could be served by the same case manager, the tribe invited to apply could either sub-grant to another entity or directly serve Tribal HUD-VASH recipients from the other tribe. Should the tribe sub-grant to another entity, HUD strongly encouraged the tribe invited to ensure that the sub-recipient had sufficient capacity and was in good standing with HUD. The lead tribe would only be eligible for one grant award, not to exceed 25 units of assistance. If there were situations where a tribe/TDHE had a need to serve fewer than 15 Native American veterans, and VA determined there is the capacity within its existing HUD VASH staff to assist Native American veterans, the tribe/TDHE may be awarded fewer than 15 units of assistance.

The grant award was based on the number of units requested by a tribe/TDHE, the rents established by the tribe, and a per-unit administrative fee. Once awarded, a tribe/TDHE may provide assistance to additional Native American veterans if there are funds remaining from the initial grant, and the VA is able to provide Case Management support at no additional cost.

## **V. Application and Submission Information**

HUD consolidates and restates previously issued application and submission guidance for Tribal HUD-VASH with the publication of this Notice. Any future changes to application and submission guidelines will be outlined in any future Federal Register or Public and Indian Housing (PIH) Notices issued by HUD.

### **A. Application Receipt Deadline**

Subject to the availability of appropriations, applicants for this program should submit applications in accordance with the requirements outlined in any future Federal Register or PIH Notices issued by HUD.

### **B. Eligible Applicants**

Eligible applicants are Indian tribes as defined in section 4(13) of NAHASDA or TDHEs authorized by one or more tribes pursuant to section 4(22) of NAHASDA and 24 CFR 1000.206 and invited by HUD to apply for Tribal HUD-VASH per the allocation method described under Section IV of this Notice.

### **C. Content of Application, Forms, and Required Elements**

The applicant must submit all forms and information required in this section and in accordance with any future Notices issued by HUD.

- 1. Contact Information:** Tribe/TDHE and point of contact; mailing address; phone number; and email address; including name, title, and signature of person authorized to submit the application.
- 2. Other Identifying Information:** Employer/taxpayer identification number (EIN/TIN) and organizational DUNS number.
- 3. System for Award Management (SAM):** Evidence of active, valid SAM registration.
- 4. Units of Assistance Requested:** Provide the estimated total number of rental housing units that the Indian tribe or TDHE plans to provide to Native American veterans with assistance under this program, and whether the assistance will be Tenant-Based Rental Assistance, Project-Based Rental Assistance, or a combination

of both. Provide a table detailing the estimated number of units requested by the number of bedrooms and the corresponding rent, as well as a written justification for the rent structure (see Section VI. H. Rent). If the applicant seeks both Tenant-Based and Project-Based Assistance, provide separate tables. FMRs can be found at [www.huduser.org/portal/datasets/fmr.html](http://www.huduser.org/portal/datasets/fmr.html).

<b>Rental Assistance Requested by Number of Bedrooms: <u>(total number)</u></b>							
<b>Type of Assistance: <u>(Tenant-Based or Project-Based Rental Assistance)</u></b>							
<b>0-BR</b>	<b>1-BR</b>	<b>2-BR</b>	<b>3-BR</b>	<b>4-BR</b>	<b>5-BR</b>	<b>6-BR</b>	<b>Total #</b>
<b>Estimated Rent for Area by Number of Bedrooms</b>							
<b>0-BR</b>	<b>1-BR</b>	<b>2-BR</b>	<b>3-BR</b>	<b>4-BR</b>	<b>5-BR</b>	<b>6-BR</b>	<b>Total \$</b>

## 5. Tenant-Based Rental Assistance vs. Project-Based Rental Assistance

In the Tribal HUD-VASH application, the tribe/TDHE must determine if the rental housing assistance provided under the program will be Tenant-Based Rental Assistance and/or Project-Based Rental Assistance. After receiving the grant, a tribe/TDHE may make a determination to convert from one type of rental assistance to the other for any unutilized grant funds. If the switch is from Tenant-Based to Project-Based Rental Assistance, then the tribe/TDHE must comply with paragraph C.5.b below, and submit the Project-Based Rental Assistance information requested below in paragraph C.7 for HUD approval prior to the actual switch.

- a. Tenant-Based Rental Assistance:** A tribe/THDE may apply for a grant under this program to provide Tenant-Based Rental Assistance to Native American

veterans. The tribe/TDHE will either assist the Native American veteran in locating privately-owned housing and enter into a contract with the owner of the housing, or provide housing in a unit that is owned or operated by the tribe/TDHE. Tenant-Based Rental Assistance will be subject to requirements further described in this Notice.

- b. Project-Based Rental Assistance:** A tribe/THDE may apply for a grant under this program to provide Project-Based Rental Assistance to Native American veterans. To be considered for Project-Based Rental Assistance, a tribe/TDHE's IHBG LOCCS balance cannot exceed three times its most current FY grant, unless the tribe received an IHBG that was less than \$75,000 in that year.

The tribe/TDHE will provide a monthly rental assistance payment for a specific housing unit in which an eligible Native American veteran will reside. The housing unit will be specifically designated as a unit that is available for Native American veterans eligible under this program. Project-Based Rental Assistance may be provided to privately-owned housing with a contract with the owner of the housing, or a unit that is owned or operated by the tribe/TDHE. Project-Based Rental Assistance will be subject to requirements further described in this Notice.

- 6. Project-Based Rental Assistance Submission:** If requesting funds for Project-Based Rental Assistance, also provide the following information:

- a. The number of units and the type of structure to which the assistance units will be attached.

- b. The ownership of the project and evidence of site control.
  - c. If a tribe/TDHE proposes to use its grant to provide rental assistance payments for rental housing units not yet constructed or rehabilitated, provide:
    - i. a project timeline, including the length of time the Tribal HUD-VASH assistance would not be used while waiting for the units to be completed (projects with timeframes longer than 2 years until completion will not be approved);
    - ii. A detailed budget for the project including all sources and uses of funding; and
    - iii. Evidence showing experience of the tribe/TDHE in developing new housing.
- 7. Tribal Resolution:** If an application is submitted by a TDHE on behalf of an Indian tribe(s), a tribal resolution(s) must be submitted authorizing the TDHE to submit the application under this program.
- 8. Mitigation Plan:** Per the 2015 Appropriations Act, HUD must consider administrative capacity before making awards. HUD will examine a range of capacity indicators, including outstanding financial audits; unresolved HUD monitoring findings, Office of Inspector General (OIG) findings or audit findings; unresolved outstanding civil rights violations, high unexpended grant balances; and overall administrative capacity to administer a new program. If the invitation requires an applicant to submit a mitigation plan as a precondition to receiving an award due to capacity concerns identified by HUD, the applicant must submit the

mitigation plan with the application. The mitigation plan must be approved by HUD before funds will be awarded.

**9. Disclosure of Lobbying Activities (SFLLL):** This form must be submitted by State-recognized Indian tribes and TDHEs established only under state law.

**10. Code of Conduct:** If the applicant's Code of Conduct (code) is not listed on HUD's website at:

[https://www.hud.gov/program\\_offices/spm/gmomgmt/grantsinfo/conduct](https://www.hud.gov/program_offices/spm/gmomgmt/grantsinfo/conduct) or if the information on the website has changed, a copy of the code must be submitted with the application.

**11. Community Involvement:** The applicant is encouraged to involve the community in developing and implementing the Tribal HUD-VASH program.

Please include a description of actions taken to allow for citizen participation.

#### **D. Application Review Procedures**

HUD will review each application and will respond to each application within 30 days of receipt or in accordance with the requirements outlined in future Notices issued by HUD. Upon HUD's approval of the application, a Tribal HUD-VASH grant will be awarded to a tribe/TDHE. HUD will issue a grant agreement to be signed by the tribe/TDHE and will disburse funds through the HUD LOCCS system.

#### **VI. Tribal HUD-VASH Program Requirements, Waivers, and Alternative Requirements**

The 2015 Appropriations Act requires tribes and TDHEs that receive funding under Tribal HUD-VASH to administer the program in accordance with NAHASDA and the IHBG regulations at 24 CFR part 1000, except as modified in this Notice. The program requirements for the HCV program found at 24 CFR part 982 and the project-based

voucher (PBV) program requirements found at 24 CFR part 983 do not apply unless specifically made applicable by this Notice. The following Notices also do not apply to Tribal HUD-VASH: PIH 2015-11, PIH 2014-23, PIH 2011-50 PIH-2010-40, and 77 FR 17086. In addition, the 2015 Appropriations Act authorizes HUD, in coordination with the VA, to waive, or specify alternative requirements for, any provision of any statute or regulation (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), that HUD administers in connection with the use of these funds, upon a finding by HUD that any such waivers or alternative requirements are necessary for the effective delivery and administration of assistance under this program. This section of the Notice sets forth requirements for Tribal HUD-VASH that replace or augment those in NAHASDA, and that HUD determined are necessary for the effective delivery and administration of Tribal HUD-VASH. These waivers or alternative requirements are exceptions to the existing IHBG program requirements, which would otherwise govern the provision of Tribal HUD-VASH assistance.

#### **A. Native American Veteran Selection and Referral**

Native American veterans first will be screened by the VA in accordance with VA screening procedures and by applying the eligibility criteria in section VI, paragraph B. Native American veterans determined by the VA to be eligible for the program will be referred to the tribe/TDHE for additional screening based on the eligibility requirements also listed in paragraph B., below. Native American veterans determined eligible for assistance under this program will then be provided with rental assistance. A tribe/TDHE may not provide rental assistance under this program unless it receives a referral from the VA and the referred Native American veteran meets the eligibility criteria for housing assistance as described in paragraph B., below.



## **B. Native American Veteran Eligibility**

1. VA Screening: The VA determines the initial eligibility of Native American veterans in the Tribal HUD-VASH program. VA screens for the following program eligibility requirements:
  - a. Eligible for VA health care (based on factors such as length of time in active duty, service, and type of discharge as noted on the Native American veteran's *Certificate of Release or Discharge from Active Duty* (DD-214)). More information on veteran status and VA eligibility health care eligibility criteria can be found at [http://www.va.gov/about\\_va/](http://www.va.gov/about_va/) (Benefits, "Applying for Benefits").
  - b. A determination of Homeless or At Risk of Homelessness in accordance with this Notice.
  - c. A clinical need for Case Management services (e.g., a disabling physical or mental condition, or substance use that contributes significantly to the Native American veteran's housing status), as determined by VA.
  - d. The Native American veteran's agreement to participate in VA Case Management.
2. VA will prioritize eligible Native American veterans based on their level of need for Case Management. Those veterans with the greatest need for Case Management will be the first to be referred to a participating tribe/TDHE for rental assistance.
3. For the purposes of this program, eligibility status for housing does not extend to a deceased veteran's family.
4. Tribe/TDHE Screening: The tribe/TDHE must accept all VA referrals of Native American veterans and their families from its VA partner and screen for the following eligibility requirements:

- a. A determination that the veteran is “Indian” as defined in section 4(10) of NAHASDA.
- b. A determination that the Native American veteran is income-eligible. To be eligible, a veteran household’s annual income must be no more than 80 percent of the greater of the median income for the Indian area, or the median income for the United States as prescribed by Section 4(15) of NAHASDA. Tribes/TDHEs will be subject to the same definition of “annual income” as in 24 CFR 1000.10. Tribes may follow their existing IHBG policies on calculating income in compliance with 24 CFR 1000.10, or they may establish new policies specific to the Tribal HUD-VASH program. Native American veterans may qualify for assistance under this program if they meet the income eligibility requirements in this Notice at the time they enter the Tribal HUD-VASH program. HUD is adopting the definitions of Homeless and At Risk of Homelessness that are in the McKinney-Vento Act, but the income requirements of McKinney-Vento do not apply to this program. Tribes and TDHEs may not provide assistance under this program to any over-income Native American veteran that would otherwise be deemed eligible under the over-income or essential family categories in Sections 201(b)(2) and (3) of NAHASDA, unless the household met the income requirements at the time that they entered the program. To ensure that those Homeless and At Risk of Homeless Native American veterans with the greatest housing need will be first served by this program, HUD has found it necessary to waive of Sections 201(b) (2) and (3) of NAHASDA, and regulations at 24 CFR 1000.104 – 1000.110, to limit eligibility to

Native American veterans whose income is no more than 80 percent of area median income for the Indian area.

- c. A determination that the veteran is not registered as a lifetime sex offender. HUD is establishing the following alternative requirements to section 207(b) of NAHASDA, and 24 CFR 1000.120 relating to tenant selection. HUD is applying the screening requirements similar to 24 CFR 982.553(a) (2) relating to registered lifetime sex offenders. Tribes/TDHEs are required to establish written standards that prohibit admission if the veteran or any member of the household is subject to a lifetime registration requirement (Tier III offense) under any state sex offender registration program. As part of the eligibility screening process, a tribe/TDHE must perform a background check to see if the referred veteran or any household member is subject to a lifetime sex offender registration requirement in the state where the housing is located and in other states where the household members are known to have resided. If a household member other than the Homeless or At Risk of Homelessness veteran (which would result in denial of admission for the household) is subject to lifetime registration under a state sex offender registration, the remaining household members may be served if the veteran agrees to remove the sex offender from its household composition. This requirement is necessary to ensure consistent policy across HUD-VASH programs relating to providing assistance to registered sex-offenders.
- d. Annual income is used to determine program eligibility under NAHASDA. Per PIH Notice 2011-15, veteran compensation for service-connected disability or death under title 38 U.S.C. chapter 11, and dependency and indemnity compensation for

service-connected deaths under title 38 U.S.C. chapter 13 are excluded from income. Refer to NAHASDA Program Guidance 2013-05 for more information on calculating income.

5. Written documentation of all referrals and eligibility screening must be maintained in the veteran's file by the tribe/TDHE.

### **C. Awarding Housing Assistance to an Eligible Veteran**

Once the tribe/TDHE performs all the activities listed above and the Native American veteran is deemed eligible, the tribe must offer rental housing assistance provided by this program to the participant. Tenant-Based Rental Assistance must be provided with an initial search term of 120 days from the date such assistance is offered. Project-Based Rental Assistance must be offered in the form of the next available project-based unit.

To ensure consistency with the standard HUD-VASH program and to serve the maximum number of Native American veterans in need of housing stability, tribes/TDHEs will not be allowed to deny assistance to an otherwise eligible Native American veteran who has been referred by the case manager on any grounds other than preferences based on tribal membership in accordance with the tribe/TDHE's written admissions and occupancy policies. Where a tribe/TDHE has adopted a tribal preference policy on admissions and occupancy that provides that the tribe/TDHE will provide assistance to a tribal member before members of other Indian tribes, the tribe/TDHE may prioritize assistance under this program to tribal members. If a tribe/TDHE has remaining grant funds after serving its tribal members veterans, it must serve other referred Native American veterans that are members of other Indian tribes until all grant funds under this program have been fully spent and may not refuse to provide such assistance. Tribes/TDHEs may adopt a tribal preference policy specifically for this program. Tribes/TDHEs

may not deny admission to a referred and eligible Native American veteran because of any factors or reasons, other than tribal preference, such as criminal history (aside from sex offender status) or substance abuse.

#### **D. Record Keeping at Initial Occupancy**

In addition to maintaining records of referral and eligibility determination as required in paragraph B.5. above, a tribe/TDHE must also collect, keep on file, and report, additional household demographic, personal (including social security numbers), and rental information using a HUD-50058 form revised for the Tribal HUD-VASH program. This information also is required to be reported through an electronic reporting system as prescribed by HUD. See ONAP Program Guidance, “Record Keeping at Initial Occupancy” (No. 2016-05) for further guidance on required record keeping.

At initial occupancy, tribes/TDHEs will need to collect Social Security numbers (SSNs) for Homeless or At Risk of Homelessness veterans and their household members. This information must be maintained in the veteran’s physical file. An original document issued by a federal, state, or tribal government agency, which contains the name of the individual and the SSN of the individual along with other identifying information, is acceptable in accordance with the standards in 24 CFR 5.216(g). In the case of the Homeless or At Risk of Homelessness veteran, the tribe/TDHE must accept the *Certificate of Release or Discharge from Active Duty* (DD-214) or the VA-verified *Application for Health Benefits* (10-10EZ) as verification of SSN, and cannot require the veteran to provide a SSN card. These documents must also be accepted for proof-of-age purposes in lieu of birth certificates or other tribe/TDHE-required documentation. Please note that veterans are also issued photo identification cards by the VA. If

such identification is required by the tribe/TDHE, these cards must be accepted by the tribe/TDHE in lieu of another type of government-issued photo identification.

#### **E. Case Management**

As part of the VA Case Management duties, the veteran's case manager will assist the veteran in locating appropriate housing for the veteran. VA responsibilities for Case Management also include (1) providing appropriate treatment, referrals, and supportive services to the veteran, if needed, prior to tribe/TDHE issuance of rental assistance; (2) identifying the social service and medical concerns of the veteran and providing, or ensuring the provision of, regular ongoing Case Management, outpatient health services, crisis intervention, and other supportive services as needed throughout the veteran's participation period; and (3) maintaining records and providing information for evaluation purposes, as required by HUD and the VA.

As a condition of receiving rental assistance under this program, an eligible veteran must agree to receive the Case Management services noted above. If a Tribal HUD-VASH case manager determines that a veteran fails to participate without good cause in Case Management, the participant's rental assistance may be terminated. However, a determination by the case manager that the participant veteran no longer requires Case Management is not grounds for termination of assistance.

#### **F. Local Housing Codes and Quality Standards**

Once a unit is located or ready to be occupied by a veteran, the tribe/TDHE must make a determination that the unit meets applicable local housing codes and quality standards in accordance with section 207(a) (2) of NAHASDA.

## **G. Ineligible Housing**

Under the 2015 Appropriations Act, assistance under this program is limited to Native American veterans that are Homeless or At Risk of Homelessness living on or near a reservation or other Indian areas. Accordingly, tribes/TDHEs participating in this program must house Native American veterans either on or near reservations, or within NAHASDA-authorized Indian areas, with the exception of units developed to house Homeless veterans on the grounds of a VA facility.

Assistance under this program may not be provided to Native American veterans who will be residing in a housing unit that qualifies as Formula Current Assisted Stock under the IHBG program. Refer to the ONAP Program Guidance, “IHBG in the Tribal HUD-VASH Program” (No. 2018-01) for more information.

## **H. Rent**

1. Due to the limited availability of housing stock on or near reservations or in NAHASDA Indian Areas that is not developed, or has been otherwise assisted, with NAHASDA funding, HUD has found it necessary to establish alternative requirements regarding the maximum rent for a unit assisted under NAHASDA. These alternative requirements affect sections 203(a) of NAHASDA, and regulations at 24 CFR 1000.124, and 1000.130, which limit the maximum rent that can be charged to 30 percent of a household’s adjusted monthly income. The alternative requirement allows a tribe/TDHE to determine rents by bedroom size based on the local FMR, market conditions and/or unit operating costs. Tribes/TDHEs must submit a justification as to how rent is determined in their program application. For both, housing units owned or operated by the tribe/TDHE, and privately-owned units, rents may not exceed 110

percent of FMR. If a tribe/TDHE deems it necessary to charge more than 110 percent of FMR (or to place a veteran in a privately-owned unit with a rent that exceeds 110 percent of FMR), it must obtain HUD's prior approval to do so. For example, a tribe/TDHE may find it necessary to request such approval in order to address a request for a reasonable accommodation for a person with disabilities or in instances where rental market conditions render it difficult to find rent at 110 percent of FMR. HUD encourages tribes/TDHEs to establish rents at a level that is less than 110 percent of the FMR, particularly in housing that is owned or operated by the tribe/TDHE, to allow more Native American veterans to receive assistance. These alternative requirements do not apply to any other HUD-assisted housing that may be subject to other rent restrictions.

2. Bedroom size must be determined based the number of family members living in the household, not on the number of bedrooms in the unit to be rented. Guidelines for determining unit size are one bedroom for each two persons within the household, except:
  - a. Persons of the opposite sex (other than spouses, and children under age 5) are not required to share a bedroom;
  - b. Persons of different generations are not required to share a bedroom;
  - c. Live-in aides must be allocated a separate bedroom. No additional bedrooms will be provided for the live-in aide's family; and
  - d. Single person families must be allocated zero or one bedroom.

Therefore, in situations where the available housing has more bedrooms than necessary for the family size and composition, the rental assistance payment must be limited to the number of bedrooms based on the guidelines listed above. If a recipient chooses to "over house" a



Veteran family by placing the family in a larger unit than the family requires under the above guidelines, the maximum amount of Tribal HUD-VASH funds that can be used to house the Veteran family is the rent for a unit sized in accordance with the guidelines, and in accordance with Section VI., subsection H of this Notice. Any additional rental costs due to over housing cannot be funded with Tribal HUD-VASH or regular IHBG funds, but can be funded by other resources. In addition, Tribes/TDHEs may want to consider shared housing arrangements in situations where appropriate-sized housing is limited, but where individual veterans could have a separate bedroom and share common areas.

### **I. Tenant Rent Contribution Payment**

Eligible Native American veterans and their families will be required to make a monthly tenant rent contribution payment that is no more than 30 percent of their monthly adjusted income (as defined in NAHASDA and implementing regulations). The tribe/TDHE will pay the difference between the rent and the tenant rent contribution payment. Consistent with 24 CFR 1000.132, the tribe/TDHE may determine if utilities are included in the rent for the unit. The tribe/TDHE may also make this determination when negotiating rental assistance payment contracts with private owners of housing. Tribes/TDHEs may establish a tenant rent contribution payment amount for a Native American veteran that is less than 30 percent of monthly adjusted income. IHBG funds may be used to cover any additional costs related to housing Native American veterans and their families under this program.

### **J. Rental Assistance Payment Contract**

A tribe/TDHE must enter into a contract with the owner of the privately-owned rental housing units in which the Native American veteran will reside. The contract will govern rental assistance provided under this program to the owner by the tribe/TDHE. Specific terms and

conditions will be required. See ONAP Program Guidance, “Rental Assistance Payment (RAP) Contract Requirements” (No. 2016-04R) for further guidance on the required contract contents.

#### **K. Program Income**

HUD has found it necessary to establish alternative requirements to section 104(a) of NAHASDA, and 24 CFR 1000.62 - 1000.64, relating to program income received by the tribe/TDHE under this program to ensure program funds continue to be used to provide affordable housing to low-income Native American families. Amounts paid to the tribe/TDHE to cover the rental assistance payment of Native American veterans and their families in tribe/TDHE-owned or operated housing; tenant rent contribution payments collected under this program; and any other income earned from the disbursement of grant funds, including income earned on funds received from such payments; will be considered program income, and must be spent on affordable housing activities, which will be subject to the requirements of NAHASDA and any other applicable Federal law. Notwithstanding Section 104(a) of NAHASDA, and 24 CFR 1000.62 - 1000.64, such income may not be spent on housing-related activities, as that term is defined in 24 CFR 1000.10. HUD strongly encourages tribes/TDHEs to use this program income to further provide affordable housing assistance to Homeless or At Risk of Homelessness Native American veterans eligible under this program first, before providing assistance to other low-income Native American families. Additionally, all such amounts must be tracked and reported in the Federal Financial Report (SF-425) to ensure compliance with this requirement.

#### **L. Environmental Review**

In accordance with the environmental requirements in 24 CFR 1000.20, the tribe/TDHE may not enter into a project-based rental assistance contract or lease before completion of an environmental review and either HUD approval of a Request for Release of Funds under 24 CFR

part 58 or HUD approval of the property under 24 CFR part 50. However, in accordance with 24 CFR 50.19(b) (11) and 24 CFR 58.35(b) (1), tenant-based rental assistance is excluded from environmental review.

#### **M. Administrative Fee and Reserve Accounts**

HUD has found it necessary to establish alternative requirements to section 101(h) of NAHASDA, and 24 CFR 1000.236 - 1000.239 to ensure that administrative fees received under this program can pay for, and are limited to, administrative and planning expenses related to this program. Tribes/TDHEs participating in the program will receive a flat administrative fee of \$1,020 per unit, for a 12-month period, which can also be used for start-up funding. These funds will be included as part of the grant issued under this program.

A tribe/TDHE may use up to this amount for eligible administrative and planning expenses related only to this Tribal HUD-VASH program. These funds may not be used to pay for administrative and planning expenses related to the tribe/TDHE's IHBG program or any other program. If, after covering all administrative Tribal HUD-VASH expenses, there is a residual administrative fee amount, these funds may be used to provide additional rental assistance to Native American veterans and their families under Tribal HUD-VASH.

Eligible administrative expenses include but are not limited to: (1) eligibility determinations; (2) intake and briefings; (3) owner outreach efforts; (4) unit inspections; (5) rent negotiations; (6) annual and interim reexaminations; (7) tenant fraud investigations and hearings; (8) processing subsequent moves; (9) the costs associated with making rental assistance payments to owners; and (10) complying with reporting requirements.

HUD is waiving section 202(9) of NAHASDA and 24 CFR 1000.239 relating to reserve accounts established to accumulate amounts for administration and planning. Given the need to

ensure the timely expenditure of funds under this program, and the limited scope of this demonstration program, tribes/TDHEs may not draw down funds under this program and deposit them in a reserve account to accumulate amounts for administration and planning.

#### **N. Interim and Annual Reexaminations**

HUD has established alternative requirements to 24 CFR 1000.128(b) relating to income reexamination requirements. HUD has found it necessary to require interim reexaminations if a Native American veteran's household income decreases so that the rental assistance payment may increase to cover the cost of rent. Further, if the program is given renewal authority, it will be necessary to conduct annual reexaminations to capture annual fluctuations in income and rent as well as track demographic data necessary for the reporting requirements of the program.

Tribes/TDHEs must conduct an interim reexamination if the Native American veteran's income decreases between annual certifications. If there have been any changes in income, rent, or household composition they must be reported using the relevant sections of the HUD-50058 Form. A paper copy of this information must be kept in the veteran's file and be transmitted electronically to HUD at the time of the interim reexamination. In the event of renewal funding for the program, the tribes/TDHEs must conduct an annual reexamination of the Native American veteran and the household's income to determine rental assistance payments and tenant rent contribution payments. Annual reexaminations must also collect and update household demographic, personal and rental information reported on the Tribal Family Report (HUD-50058 form). A paper copy of this information must be kept in the veteran's file and an electronic version of this information must be sent

to HUD. Rental information reported during the annual recertification will be used to calculate renewal funding.

If, upon annual reexamination, a Native American veteran or his/her household is determined to be over-income, the tribe can continue to serve the Native American veteran/household and not have it count towards its 10 percent over-income cap under 24 CFR 1000.110(c). If the Native American veteran/household's adjusted rent contribution payment, based on the income increase, is equal to the rent for the unit, then the Tribal HUD-VASH rental assistance is no longer needed and this assistance must be used on the next eligible Native American veteran. In this instance, the over-income Native American veteran can continue to receive Case Management services from the VA for as long as the VA deems the care necessary.

#### **O. Reporting Requirements**

As required by Congress, tribes/TDHEs must submit demographic and financial information generated by the Tribal HUD-VASH program. Grant funds received under this program must be reported annually in a tribe/TDHE's Indian Housing Plan and Annual Performance Report. Information on grant funds and program income received under this program also must be reported quarterly on the Federal Financial Report (SF-425). Tribes and TDHEs must fill out relevant demographic and rental information on the HUD Form 50058 and keep a physical record of this form. Additionally, tribes/TDHEs will be required to transmit data from this form electronically on a monthly, quarterly, or annual basis via a method provided by HUD. HUD encourages tribes to make effective use of evidence in identifying or selecting the practices and strategies for implementing HUD

VASH. All tribes and TDHEs must agree to cooperate in HUD-funded research and evaluation studies.

**P. Turnover of Tribal HUD-VASH Assistance**

In accordance with the 2015 Appropriations Act, if the Tribal HUD-VASH rental assistance is no longer needed by a Native American veteran, this assistance must be issued to other eligible Native American veterans as identified by a case manager and as described further in this Notice.

**Q. Termination of Assistance to Native American Veterans**

Participating tribes and TDHEs must comply with requirements of section 207 of NAHASDA on termination of assistance. In addition, before determining whether to terminate assistance, tribes and TDHEs must contact the case manager to determine if ongoing Case Management services could mitigate the conditions that are leading to a potential termination. Participating tribes and TDHEs are subject to Section 504 of the Rehabilitation Act and HUD's regulation at 24 CFR part 8, which would include providing reasonable accommodations to individuals with disabilities throughout the termination process.

**R. Renewal Funding**

Renewal funding under the Tribal HUD-VASH program is subject to the availability of future appropriations. If appropriated, the process by which existing Tribal HUD-VASH recipients may seek renewal funding will be published annually in a PIH Notice. HUD will award renewal funds based on the criteria specified in the appropriation language and requirements issued in this Notice. If funding is not available, then tribes/TDHEs should use their best efforts to allocate IHBG funds to support Homeless or At Risk of

Homelessness Native American veterans and their families that are currently being assisted through Tribal HUD-VASH programs.

#### **S. Investment of Grant Funds**

HUD is waiving section 204(b) of NAHASDA and 24 CFR 1000.58 relating to the investment of grant funds. Given the need to ensure the timely expenditure of funds under this program, and the limited scope of this demonstration program, tribes/TDHEs may not draw down funds under this program to invest in securities or other obligations.

#### **T. Reduction and Termination of HUD-VASH Grant Funds, Appeal of HUD**

##### **Determinations, and Reallocation of Grant Funds**

Because of the urgent housing needs of Native American veterans and their families, the relatively limited amount of funding under this program, the limited scope of this demonstration program, and the need to ensure the timely expenditure of funding, HUD finds it necessary for the effective delivery and administration of assistance under this program to waive Title IV of NAHASDA, and all implementing regulations at 24 CFR part 1000 as they relate to termination, reduction and limitation of assistance, and reallocation of such assistance to other tribes/TDHEs under this program. HUD is establishing alternative requirements to Title IV of NAHASDA, and relevant implementing regulations 24 CFR part 1000.

To ensure compliance with program requirements, HUD will conduct remote and on-site monitoring, as appropriate. After HUD has provided sufficient warning and time to cure, HUD may find it necessary to terminate, reduce, or limit the availability of the grant to a tribe/TDHE for poor performance or substantial noncompliance with program requirements. Poor performance, as determined by HUD may include actions outside of

the tribe/TDHE's responsibility such as lack of adequate referrals or poor quality of supportive services provided by a contracted case management entity, or other reasons. Poor performance also includes an inadequate voucher utilization rate by the tribe or TDHE. Substantial noncompliance with program requirements is noncompliance that HUD determines: (1) has a material effect on the tribe/TDHE's Tribal HUD-VASH program; (2) represents a material pattern or practice of activities constituting willful noncompliance with program requirements, even if a single instance of noncompliance would not be substantial; or (3) places the tribe/TDHE's Tribal HUD-VASH program at substantial risk of fraud, waste, or abuse. HUD may also terminate or reduce grant funds in situations where a tribe/TDHE is not carrying out activities due to a lack of Homeless Native veterans who need housing, or the recipient's failure to comply with its mitigation plan.

If, after expiration of any applicable cure period, HUD determines that a tribe/TDHE lacks Homeless Native veterans who need housing, is performing poorly, or is in substantial noncompliance with program requirements, HUD will provide written Notice to the tribe/TDHE informing it of HUD's decision to terminate, reduce, or limit the availability of the grant. If the tribe/TDHE disagrees with HUD's determination, it may appeal that decision in writing to HUD within 30 days of receipt of HUD's written Notice. In such appeal, the tribe/TDHE must demonstrate to HUD's satisfaction good cause to maintain its grant under this program, including and, as applicable, demonstrate how it will cure its noncompliance or improve its poor performance, within a time period deemed acceptable by HUD. In situations where HUD determines a tribe/TDHE is not carrying out activities due to a lack of Homeless Native veterans, the tribe/TDHE must demonstrate to HUD's satisfaction the level of Homeless Native veteran housing need that corresponds to



the assistance the tribe/TDHE is currently receiving. If HUD denies the tribe/TDHE's appeal, it will provide written Notice of the denial and its reason for the denial. The tribe/TDHE will have 30 days from the date of receipt of HUD's written Notice of denial to submit a written request for reconsideration to HUD setting forth justification for reconsideration. HUD will reconsider the tribe/TDHE's submission and either affirm, modify, or reverse its initial decision in writing and will set forth HUD's reasons for the decision. Reconsideration will be conducted by an official other than the one who decided the tribe/TDHE's appeal. If HUD affirms its initial decision on reconsideration, HUD's decision will constitute final agency action. HUD will not take any action to terminate, reduce, or limit a tribe/TDHE's assistance until the tribe/TDHE has exhausted all of its appeal and reconsideration rights.

If, after receiving Notice informing it of HUD's decision to terminate, reduce, or limit the availability of assistance, the tribe/TDHE fails to submit a timely appeal or request for reconsideration, fails to demonstrate to HUD's satisfaction good cause to maintain its grant funds under this program, or fails to cure its noncompliance or poor performance within the time specified by HUD, HUD is authorized to terminate, reduce, or limit the availability of the tribe/TDHE's grant funds under this program. HUD may use its discretion to reallocate the grant funds resulting from such reduction or termination, to any other tribe/TDHE that is in compliance with program requirements and is not deemed to be a poor performer, and that still has a need to house Homeless Native veterans. Grant funds may be reallocated among tribe/TDHEs within the same ONAP region, or among tribes/TDHEs in different ONAP regions, based on administrative capacity, the utilization

of previously awarded Tribal HUD-VASH assistance, and current geographic need as determined by the VA and HUD.

To the extent that any provision of Title VI of NAHASDA or any implementing regulation at 24 CFR part 1000 conflicts with the appeal process described above including, but not limited to, the opportunity for an administrative hearing, the provisions of this Notice will apply.

#### **U. Nondiscrimination Requirements**

The Tribal HUD-VASH program is administered in accordance with applicable civil rights and fair housing laws and requirements. Tribes/TDHEs shall be subject to all nondiscrimination requirements that are applicable under NAHASDA and the IHBG regulations at 24 CFR part 1000 and in particular 24 CFR 1000.12

#### **V. Electronic Submission Requirement**

For the demonstration program, HUD waived the requirement to submit applications for grant funding through [www.grants.gov](http://www.grants.gov), as required in 24 CFR 5.1005. Considering the statutory deadline to publish the October 21, 2015 Notice and begin the process of awarding funding, and the limited amount of available funds under this program, HUD determined that allowing the submission of paper applications was less burdensome and allowed HUD to make awards in a timelier manner. Subject to the availability of appropriations, applicants for this program should submit applications in accordance with the requirements outlined in any future Federal Register or Public and Indian Housing (PIH) Notices issued by HUD.

## **VII. Environmental Impact**

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877-8339.

Date: May 10, 2018

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Dominique Blom  
General Deputy Assistant Secretary for  
Public and Indian Housing

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**[FR-6091-N-01]**

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